IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9569 of 2001
WITH
CIVIL APPLICATION No. 10088 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER (RE-HABILITATION) - Petitioner(s)
Versus
AMBALAL UDAY SINH VAGHELA - Respondent(s)

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Appearance :
MR AJ DESAI for Petitioner(s) : 1,
MR RD RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 19/06/2007

ORAL JUDGMENT

1. The petitioner, Commissioner (Re-Habilitation), Sardar Sarovar Punarvasvat Agency,

has invoked Articles 226 and 227 of the Constitution to challenge the award and order dated 06.06.2001 of Labour Court, Vadodara in Reference (L.C.V.) No.131 of 1995, whereunder the respondent-workman was ordered to be reinstated with continuous service, 50% back wages and Rs.1,000/- by way of cost. Even as the petition was admitted in October, 2001 and interim relief staying the operation of the impugned award was granted, the respondent had made the application under the provisions of Section 17B of the Industrial Disputes Act, 1947 (for short, “the Act”) with a supporting affidavit to the effect that he was unemployed throughout the period of pendency of the reference as well as the present proceeding. No affidavit-in-reply was filed to controvert the averments made by the respondent in his affidavit.

2. Learned counsel on both sides agreed and requested the Court to hear the main petition and the Civil Application together and make

appropriate order, in the peculiar facts and circumstances of the case. Even as the Labour Court had recorded in the impugned order findings of fact to the effect that the respondent had completed more than 240 days of continuous service in the period of 12 months preceding the date of termination of his service and that the termination of service was illegal and in violation of the provisions of Section 25-F of the Act, it was sought to be argued on behalf of the petitioner that the whole establishment of the petitioner was of a temporary nature and the respondent was also appointed purely on temporary basis. Learned counsel Mr.A.J. Desai vehemently argued that the first order dated 13.04.1993 by which the petitioner was appointed for a period of three months clearly stipulated the period of appointment as also the condition that the appointment was to enure till a peon was appointed in another manner. Similar appointment order dated 27.07.1993 was issued appointing the respondent for a period of six months as peon on

contract basis. After referring to those appointment orders, it was fairly conceded that the subsequent period of service was not covered by any appointment order and, after 9 months of service subsequent to the expiry of the period of last mentioned order, the order dated 27.09.1994 came to be issued to terminate the service for administrative reasons. A copy of that order is produced on record at Annexure-D and it does not even refer to any condition of appointment or any appointment order. Thus, it was clear that the respondent along with two other employees was discharged from service neither in terms of the conditions contained in appointment order nor in accordance with law in so far as the relevant provisions of the Industrial Disputes Act were not even purported to have been complied.

3. Therefore, the Labour Court was perfectly justified, after elaborate discussion of evidence and contention, in reaching to the conclusion that termination of service of respondent was

violative of the mandatory provisions of the Industrial Disputes Act. As for the grant of relief, it was noted that, although the petitioner had completely failed in discharging the burden of proving any alternative employment undertaken by the respondent, he could be presumed to have earned some livelihood from some source.

4. Learned counsel Mr. Desai has relied upon the recent judgment in **Punjab State Electricity Board V/s. Darbara Singh [AIR 2006 SC 387],** wherein the basic facts were different in so far as the workman's service was dispensed with in terms of the appointment order.

5. During the course of arguments, learned counsel Mr.R.D. Raval, appearing for the respondent, fairly stated, on instructions of the respondent who was personally present in the Court, that this Court may modify the final relief in view of pendency of the reference case

for seven long years and pendency of the present proceeding for six more years. He submitted that instead of allowing the application claiming relief under the provisions of Section 17B of the Act and only upholding the award for reinstatement, the Court may order payment of a lumpsum amount towards back wages for the entire period. He also submitted that the last drawn salary of the petitioner was at the rate of approximately Rs.40/- per day and it would have increased from time to time with the rising prices.

6. Accordingly, while upholding the findings and conclusion in the impugned award, the petition is partly allowed so as to modify the impugned order to the extent that the respondent shall be reinstated with continuity of service and cost of Rs.1,000/- and paid the lumpsum amount of rupees one lac by way of back wages and towards benefits under Section 17B of the Act for the entire period from the date of termination of his

service till 30.06.2007. It is needless to clarify that the respondent shall be entitled to full back wages at the current rate with effect from 01.07.2007. Rule is made absolute with no order as to costs.

7. Civil Application also stands disposed in terms of the above order.

(D.H.WAGHELA, J.)

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